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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 TIMOTHY DIETZ,

12 Plaintiff,

13 v.

14 QUALITY LOAN SERVICE CORP. OF
15 WASHINGTON; WELLS FARGO
16 HOME MORTGAGE; WELLS FARGO
17 BANK, N.A.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; DOE DEFENDANTS
1-20,

18 Defendants.

CASE NO. C13-5948 RJB

ORDER REGARDING
DEFENDANTS' MOTION TO
DISMISS

19 This matter comes before the Court *sua sponte*. The Court has considered the record, and
20 is fully advised.

21 On November 22, 2013, Defendants Wells Fargo and Mortgage Electronic Registration
22 Systems, Inc. (MERS) filed a joint Motion to Dismiss Plaintiff's Complaint pursuant to Fed. R.
23 Civ. P. 12(b)(6). Dkt. 6. In support of the motion Defendants have relied upon the allegations in
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1 the Complaint, the Declaration of Abraham K. Lorber and exhibits attached thereto (Dkt. 7), and
2 the record herein. The motion to dismiss is noted for the Court's consideration on December 20,
3 2013. Dkt. 6.

4 Plaintiff is notified that that "[p]ro se litigants must follow the same rules of procedure
5 that govern other litigants," *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir.
6 1997), including the Federal Rules of Civil Procedure and the Western District of Washington
7 Civil Rules of Procedure (Local Rules). Plaintiff is further reminded that although his pro se
8 pleadings are held to a "less stringent standard than formal pleadings drafted by lawyers," he still
9 must meet the requirements of the rules. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

10 Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a cognizable
11 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*
12 *v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken
13 as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d
14 1295 (9th Cir. 1983). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does
15 not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his
16 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the
17 elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955,
18 1964-65 (2007). Factual allegations must be enough to raise a right to relief above the
19 speculative level, on the assumption that all the allegations in the complaint are true (even if
20 doubtful in fact). *Id.* at 1965. Plaintiff must allege enough facts to state a claim to relief that is
21 plausible on its face. *Id.* at 1974.

22 Plaintiff is notified that a party opposing the motion to dismiss has the "right to file
23 counter affidavits or other responsive evidentiary materials." *Stratton v. Buck*, 697 F.3d 1004,

1 1010 (9th Cir. 2012). If Plaintiff does not submit his own evidence in opposition, the motion to
2 dismiss, if appropriate, may be granted. *Id.* Plaintiff is reminded that if the motion to dismiss is
3 granted, that may end his case against Defendants.

4 It is so ORDERED.

5 Dated this 26th day of November, 2013.

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8 ROBERT J. BRYAN
9 United States District Judge
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